

Advisory Opinion 16-04-LOB, Alaska's Future

Presented by:
Heather Dalberg
Paralegal I

[04]

ADVISORY OPINION REQUEST

Number: AO 16-04-LOB
Requested By: Timothy A. McKeever
Prepared By: Heather L. Dalberg, Paralegal I, Juneau APOC Office
Date Issued: April 19, 2016
Subject: Reporting Requirements of Entities Making Contributions to Alaska's Future

QUESTIONS PRESENTED

1. Does Holmes, Weddle & Barcott, P.C. (a company that does not employ a lobbyist) have any reporting requirements to APOC if they make contributions to Alaska's Future?
2. Does Mr. Jansen (an individual who is not a lobbyist or an employer of a lobbyist) have any reporting requirements to APOC if he makes contributions to Alaska's Future?
3. Does an organization that is an employer of a lobbyist have to report contributions made to Alaska's Future if a) Alaska's Future is already reporting the information and b) the activities of Alaska's Future are not controlled by the organization and Alaska's Future's lobbying activity does not apply to the organization's lobbying efforts stated in their registration form?

SHORT ANSWER

1. No, Holmes, Weddle & Barcott is not an employer of a lobbyist and does not have reporting requirements with APOC for contributions it makes to Alaska's Future.
2. No, Mr. Jansen is not a lobbyist or an employer of a lobbyist as an individual. However, as the chairman of the board of an employer of a lobbyist (Lynden), Mr. Jansen may only make donations from his personal checking account. He may not make a donation with a check or financial account connected to a Lynden account. Mr. Jansen does not have reporting requirements with APOC in the event he makes a personal donation to Alaska's Future not in connection with Lynden.
3. Yes, an employer of lobbyist must report all payments made to influence legislative or administrative action.

FACTS

- Holmes, Weddle & Barcott is an Alaska corporation that is not an employer of lobbyist.
- Holmes, Weddle & Barcott is considering making a donation to the non-profit group, Alaska's Future.
- Alaska's Future is an employer of lobbyist and subject to the reporting requirements of AS 24.45.061.
- Mr. Jansen is an individual, not a lobbyist, though he is the chairman of the board and former president of Lynden, an employer of lobbyist.
- Lynden is an employer of lobbyist that has hired the lobbyist Reed Stoops.
- Mr. Jansen and Lynden are both donors to Alaska's Future.
- Alaska's Future is an employer of lobbyist that has hired the lobbyist Reed Stoops, as well as Ashley Reed, Fate Putman, and Mary Sattler.
- Lynden has hired Reed Stoops to engage in lobbying activity not related to the lobbying activity Alaska's Future has hired Reed Stoops to engage in.
- Alaska's Future is controlled and directed by a three-person board of directors. According to the advisory opinion request the board of directors does not include employees from Holmes, Weddle & Barcott, Lynden, or Mr. Jansen. However, the Articles of Incorporation for Alaska's Future lists both Timothy McKeever and Heather Cook as directors and incorporators of Alaska's Future.¹ Mr. McKeever and Ms. Cook are attorneys at Holmes, Weddle & Barcott. However, it is unknown to APOC staff whether they are owners/shareholders or employees of Holmes, Weddle & Barcott.
- Alaska's Future's purpose, as stated by the requester of this advisory opinion, is to inform and educate Alaskans on the fiscal issues facing the state, specifically the Permanent Fund Dividend program.
- Alaska's Future used a website, mailers, speeches, television and electronic communications to urge the public to directly communicate with their legislators.²

ANALYSIS

1. Holmes, Weddle & Barcott is a company that does not employ a lobbyist and is, therefore, not subject to the reporting requirements of AS 24.45.061. Under AS 24.45.061(b)(3), an employer of lobbyist is required to report the total amount of payments made to influence legislative or administrative action during each reporting period. The name and address of each person to whom these payments have been made during the reporting period, the date, and the amount need to be included in the Schedule B section of the quarterly APOC reports. In the case of

¹ <https://www.commerce.alaska.gov/cbp/Main/CorporationDetail.aspx?id=10033807> .

² www.akfuture.org

Holmes, Weddle & Barcott, its plans to make a donation to Alaska's Future do not trigger reporting requirements with APOC as it does not employ, retain, or contract the services of a lobbyist.³

2. Mr. Jansen is an individual who has made contributions to Alaska's Future. Though he is a member of Alaska's Future's leadership council, he is not on the board of directors for Alaska's Future and is not connected with the corporation in terms of making decisions on the legislative or administrative action it influences. Under AS 24.45.171(9), influencing legislative or administrative action is defined as communicating "directly for the purpose of introducing, promoting, advocating, supporting, modifying, opposing, or delaying or seeking to do the same with respect to any legislative or administrative action." Alaska's Future, through its website (www.akfuture.org), mailers, television ads, and electronic ads, encourages the Alaskan residents to directly communicate with the state's public officials.

Mr. Jansen is the former president and current chairman of the board for another employer of lobbyist, Lynden. Lynden has registered Reed Stoops as their lobbyist, a lobbyist Alaska's Future has also hired. Lynden is required to report under AS 24.45.061. Though Mr. Jansen is not listed on the report form, nor does he submit the reports himself, his connection with Lynden is undeniable. While Lynden must report donations made to influence legislative or administrative action, Mr. Jansen does not as long as his donations come from a personal account completely separate from Lynden.

Lynden is required to report any payments made to influence legislative or administrative action. This includes "a payment for or in connection with soliciting or urging other persons to enter into direct communication with a public official".⁴ This broad definition does not require a connection between the content of the communication and the lobbying interests of the employer of a lobbyist. Though Lynden's lobbying interests may not see a benefit from Mr. Jansen's personal contributions to Alaska's Future, there must be a disconnection between Mr. Jansen and Lynden when it comes to donations. If Mr. Jansen were to donate to Alaska's Future from a Lynden bank account, that would be considered to fall under AS 24.45.171(13)(E) as a payment made for or in connection with soliciting or urging other persons to enter into direct communication with a public official as that is the ultimate goal of Alaska's Future. Mr. Jansen's interests may not reflect Lynden's interests, but Lynden must report a contribution or donation made from an account linked with it. Mr. Jansen's personal banking account may be used to make donations to Alaska's Future. Personal donations by Mr. Jansen are not reportable to APOC.

³ AS 24.45.061(b)

⁴ AS 24.45.171(13)(E)

3. Alaska's Future is an employer of lobbyist and is subject to AS 24.45.061 reporting requirements. Lynden is also an employer of lobbyist and is subject to AS 24.45.061 reporting requirements. Within those requirements, an employer of lobbyist must report the total amount of payments made to influence legislative or administrative action, the compensation to the hired lobbyist, the compensation to employees engaging in lobbying activity, and any gifts over \$100 made to public officials.⁵ Alaska's Future is not required to report the donations it receives, but the donations it makes. As such, Lynden must report the contributions it makes to Alaska's Future, since Alaska's Future will not be reporting the contributions it has received.

Lynden cites its lobbying interests as "all legislation and administrative action relating to Lynden's transportation and construction business in Alaska." Although it does not list the budget crisis as a lobbying interest, Lynden is listed on Alaska's Future's website as a supporter. The homepage of the website states, "Alaska's Future is a coalition of more than 150 local organizations and businesses working together to encourage the legislature to ACT NOW to solve our budget challenge."⁶ Lynden is among the organizations listed on the main page. Though they do not cite a connection with Alaska's Future and its lobbying efforts on their reports, Lynden has a clear connection and interest in the efforts of Alaska's Future.

Alaska's Future is not controlled by Lynden and the lobbying efforts of Alaska's Future do not apply to Lynden's lobbying efforts. As an employer of a lobbyist, Lynden is required to report all payments made to influence legislative or administrative action. AS 24.45.171(13)(E) defines "payment to influence legislative or administrative action" as "a payment for or *in connection with* soliciting or urging other persons to enter into direct communication with a public official." (Emphasis added.) Though the lobbying interests of Lynden may not apply to Alaska's Future's lobbying interests, Lynden is still required to report payments to influence legislative or administrative action regardless of an association between the content of the influenced communication and the lobbying interests of the employer of a lobbyist.

CONCLUSION

1. Holmes, Weddle & Barcott, P.C. is not an employer of a lobbyist and does not have reporting requirements with APOC with respect to donations made to Alaska's Future.
2. Mr. Jansen, in his individual capacity, is not a lobbyist or an employer of a lobbyist. He may make donations to Alaska's Future from a personal account and is not required to submit any report to APOC for such donations. However, due to his connection with Lynden (an employer

⁵ AS 24.45.061(b)(3)(4)(6)

⁶ www.akfuture.org

of lobbyist) any donation he makes from a Lynden account in his capacity as an agent or representative of Lynden would be reportable to APOC.

3. An employer of a lobbyist must report all payments made to influence legislative or administrative action. Lynden must report any donations made to Alaska's Future in Schedule B of its quarterly reports to APOC.

COMMISSION DECISION

Only the Commission has the authority to approve an advisory opinion. 2 AAC 50.905. The Commission will rule on staff's proposed advice at its next regular meeting. The Commission may approve, disapprove, or modify the proposed advice. An advisory opinion must be approved by an affirmative vote of at least four members or it will be considered disapproved. Both staff's proposed advice and the Commission's final advisory opinion apply only to the specific facts and activity for which advice was requested.

If you rely on staff's proposed advisory opinion in good faith and the Commission subsequently rejects the proposed advice, staff will take no enforcement action on your activities up to that point if you acted under the specific facts described. If you have any additional questions or would like to discuss this proposed advice, please contact me at (907) 465-4864.

LAW

Sec. 24.45.061. Reports by employers of lobbyists.

(b) A person who employs, retains, or who contracts for the services of one or more lobbyists, whether independently or jointly with other persons, and who directly or indirectly makes payments to influence legislative or administrative action shall file a quarterly report containing report;

(3) the total amount of payments made to influence legislative or administrative action during the period, and the name and address of each person to whom these payments have been made during the period by the maker of the report, together with the date and amount;

(4) the date and nature of any gift exceeding \$100 in value made to any public official and the full name and official position of the recipient of each gift;

(6) the name of each lobbyist employed or retained by the person making the report, together with the total amount paid to each lobbyist and the portion of that amount, if any, that was paid for specific purposes, including salary, fees, and reimbursement for expenses; and

Sec. 24.45.171. Definitions.

(9) "influencing legislative or administrative action" means to communicate directly for the purpose of introducing, promoting, advocating, supporting, modifying, opposing, or delaying or seeking to do the same with respect to any legislative or administrative action;

(13) "payment to influence legislative or administrative action" means any of the following:

(E) a payment for or in connection with soliciting or urging other persons to enter into direct communication with a public official;

LAW OFFICES OF
HOLMES WEDDLE & BARCOTT
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TIMOTHY A. MCKEEVER
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April 13, 2016

Via email (paul.dauphinais@alaska.gov) and U. S. Postal Service

Paul Dauphinais
Executive Director
Alaska Public Offices Commission
2221 E. Northern Lights Blvd., Ste. 128
Anchorage, AK 99508

RE: Request for an Advisory Opinion

Dear Mr. Dauphinais:

As you have requested the following is a revised version of the letter sent yesterday in an effort to clarify the questions asked in the prior letter.

On behalf of our firm and our clients' including Jim Jansen and Lynden, I request an advisory opinion concerning certain activities as described below.

Factual Background

Holmes Weddle and Barcott (HWB) is an Alaska professional corporation which is contemplating making a donation to Alaska's Future ("AF"). HWB is a business, is not registered as a lobbyist as defined in A.S. 24.45.171(11) and it does not employ or retain a lobbyist as defined in A.S. 24.45.061.

Mr. Jansen and Lynden have donated to Alaska's Future Inc., ("AF"). Mr. Jansen is not a lobbyist as defined in A.S. 24.45.171(11) and is not an employer of lobbyists as defined at A.S. 24.45.061.

Lynden is a business in Alaska which i) retains a third party lobbyist to lobby on its behalf and ii) files employer of lobbyist reports. However, its third party lobbyist is not retained by Lynden to engage in lobbying activities related to AF's purposes or goals and AF's activities do not directly or indirectly support or assist the Lynden's retained lobbyist's efforts on its behalf.

AF is a non-profit corporation organized and incorporated on December 2, 2015 under Alaska law. AF is controlled and directed by a three-person board of directors who have hired employees to conduct the day-to-day affairs of the corporation. Mr. Jansen is not a co-chair of AF and does not serve on the Board of Directors of AF. HWB and Lynden employees are also

not co-chairs or members of the Board of AF. Thus none of the above have direct or indirect control of the activities of AF.

AF's membership includes a diverse group of Alaskan individuals and organizations who have joined together to promote a solution to the budget deficit that threatens Alaska's future. It includes business and labor, Alaska Native organizations, non-profits, members of all the political parties, and former elected officials.

AF's purpose is to educate and inform Alaskans about the significant fiscal problems the state faces and to cultivate the broad-based public support needed to convince the Legislature during the 2016 legislative session of the urgency and importance of using a portion of the earnings of the Permanent Fund to reduce the state's deficit, support essential public services, and protect the Permanent Fund Dividend and a healthy Permanent Fund.

AF has apparently contracted with several registered lobbyists to advocate on its behalf with public officials. It also has an effort to urge Alaskans to engage in communications with their public officials in support of a change in how the earnings from the Permanent Fund can be used. It has a website at www.akfuture.org, and has prepared reports and materials to be forwarded to public officials, speeches to groups and organizations, encouraged its members and supporters to urge others to contact public officials and has distributed mailers, television and electronic communications urging direct communication with public officials.

As an "employer of lobbyists" as defined in AS 24.45.061, AF has filed a statement authorizing or verifying the retention of lobbyists and will file quarterly employer of lobbyist reports as required by AS 24.45.061(b).

On behalf of our firm and our clients, we request an advisory opinion responding to the following questions:

- 1) We note that in AO 11-05-LOB (April 1, 2011) the Commission stated "Any company making payments to MACC that does not employ a lobbyist has no reporting responsibilities to APOC under AS 24.45." In light of that conclusion, is it correct that a company, corporation (like HWB) or other entity, which does not employ or retain a lobbyist has no obligation to make any reports to the APOC concerning any contributions it has made to AF?
- 2) Is it also correct that an individual (like Mr. Jansen) who is not a lobbyist and does not employ or retain a lobbyist has no obligation to file any reports to the APOC relating to amounts donated to AF?
- 3) Is an organization or business (like Lynden) which employs or retains a lobbyist and is required to report pursuant to AS 24.45.061(b), required to make any reports to the APOC concerning contributions it has made to AF when a) AF itself will file reports as required by AS 24.45.061(b) and b) when the activities of AF are i) not controlled by the organization or business, and ii) AF's lobbying activities do not directly or

indirectly support or assist the lobbying purposes stated in the lobbyist registration forms file by or for the organization or business?

We request a formal advisory opinion from the Commission so that our clients can, if required, comply with any filing obligations for the first quarter of calendar year 2016.

If there are further questions about this request, please contact me.

Sincerely,



Timothy A. McKeever



THE STATE
of **ALASKA**
GOVERNOR BILL WALKER

Department of Administration

ALASKA PUBLIC OFFICES COMMISSION

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April 19, 2016

VIA U.S. MAIL and EMAIL

Timothy A. McKeever
701 West Eighth Ave, Suite 700
Anchorage, AK 99501-3408
tmckeever@hwb-law.com

Re: Advisory Opinion Request AO 16-04-LOB

Dear Mr. McKeever:

Please find the attached advisory opinion regarding your April 13, 2016 request for guidance related to the reporting requirements of entities making contributions to Alaska's Future.

The conclusion of this opinion has not yet been submitted for approval by the Alaska Public Offices Commission. AS 15.13.374. Only the Commission has the authority to approve an advisory opinion under 2AAC 50.840. The Commission will rule on staff's proposed advice at its next regular meeting.

Sincerely,

ALASKA PUBLIC OFFICES COMMISSION

A handwritten signature in black ink, appearing to read "Heather L. Dalberg".

Heather L. Dalberg
Paralegal I

CC: Paul Dauphinais, Executive Director
APOC Commission Members
Mary Lynn Macsalka, Assistant Attorney General
Senior Staff

Encl: Unapproved Advisory Opinion AO



THE STATE
of **ALASKA**
GOVERNOR BILL WALKER

Department of Administration

ALASKA PUBLIC OFFICES COMMISSION

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May 19, 2016

VIA EMAIL & CERTIFIED MAIL

Timothy McKeever
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301 W Northern Lights Blvd #601
Anchorage, AK 99501-3408
tmckeever@hwb-law.com

RE: COMMISSION MEETING NOTICE

Dear Mr. McKeever:

At its June 8, 2016 Commission Meeting in Anchorage, the Commission will review the matter of your advisory opinion request.

You have the right to participate at the meeting either in person or by telephone (1-800-315-6338, code 4176 #1). If you decide to participate please let APOC staff know that you will be doing so and whether your participation will be in person or via telephone. The Commission is expected to review your Advisory Opinion (AO 16-04-LOB) at approximately 9:50 AM on June 8, 2016.

If you have any questions please feel free to call APOC staff.

Sincerely,

A handwritten signature in black ink, appearing to read "Heather L. Dalberg".

Heather L. Dalberg
Paralegal I

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Tim McLean

June Meeting Notice

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